

OFFICE OF DRINKING WATER
Request for Delegation of Rulemaking
November 10, 2004

Introduction:

The mission of the Department of Health (DOH), Office of Drinking Water (ODW) is to protect the health of the people of Washington State by assuring safe and reliable drinking water. Washington regulates public water systems under both state regulations and a formal agreement with the Environmental Protection Agency for carrying out the federal Safe Drinking Water Act.

The State Board of Health (SBOH) has three regulations that establish and enforce minimum standards for drinking water quality and water system management:

- Group A Public Water Systems, chapter 246-290 WAC
Group A systems serve 15 or more residential connections or 25 or more people, 60 or more days per year.
- Group B Public Water Systems, chapter 246-291 WAC
Group B systems usually serve two to 14 connections and fewer than 25 people, or more than 25 people but for fewer than 60 days per year.
- Drinking Water Certification Rules, chapter 246-390 WAC
State drinking water certification of laboratories analyzing public drinking water samples for water quality.

The DOH has adopted additional state drinking water regulations that complement both federal and SBOH requirements.

Proposal:

The DOH, ODW is requesting delegated rule-making authority to propose changes to the SBOH Group A Public Water Systems regulation, chapter 246-290 WAC.

What: Consolidation of regulatory changes

- The State Municipal Water Law (MWL) adopted during the 2003 Legislative Session directed the DOH to develop and adopt a Water Use Efficiency regulation. The Department is currently in the rule-making process for that rule (chapter 246-290 WAC.)
- The MWL also directs changes to the Department's practices in reviewing water system planning and engineering documents currently outlined in the SBOH regulation, chapter 246-290 WAC.

Why:

- Technical updates *are needed* to the SBOH regulation to ensure consistency with legislative direction in the MWL related to planning and engineering requirements.
- Department staff and stakeholders have recommended other technical/process changes in the SBOH regulation to clarify existing practices.

- Delegation of SBOH rule-making authority to the Department would allow concurrent development with the DOH Water Use Efficiency rule, streamlining both the administrative and public process for rule making.

Specific changes being considered:

- *Table 1*—outlines the changes being considered to ensure consistency with the intent of MWL.
- *Table 2*—outlines the technical/process changes recommended to correct errors, conform regulations to current Department practices, and provide additional regulatory flexibility.

Notes:

- The lists in each table include all recommended changes currently being considered by the Department .
- The examples have not undergone legal review to determine if they are needed to implement the MWL.
- Additional changes may be recommended if/when a rule-making process is initiated, and as the Department gains more experience in implementing the MWL provisions. We are committed to keeping the Board fully informed throughout the process.

Who is affected?

- All Group A water systems.

How are they affected?

- The MWL added new planning requirements for some water systems, such as demonstrating consistency with locally adopted plans (land use, watershed, etc.). Water systems also gain benefits from the MWL, such as water rights certainty.
- The majority of changes to SBOH regulations would clarify existing requirements, resulting in no changes for most systems.

Conformance with SBOH delegation criteria:

If the SBOH delegates rule-making authority to the Department, we would provide regular updates to the Board. The SBOH “Policy for Considering Delegation of Rules to the Department of Health” provides the following elements for consideration.

- The extent to which the proposed rule revision is expected to include editorial and/or grammatical changes that do not change the substance of the rule;

The technical/process changes under consideration to the SBOH regulation apply in this category.

- The extent to which the proposed rule seeks to adopt federal requirements in which the state has little or no discretion;

The SBOH regulatory changes under consideration seek to be consistent with recently adopted state law, not federal law.

- The extent to which the substance and direction of the proposed rule is expected to have broad public and professional consensus;

There was some controversy with the Municipal Water Law; however, in preliminary discussions with our stakeholders, DOH has not heard any specific controversy regarding the rule changes being considered. DOH will fully involve stakeholders, including interests represented on the Washington Water Supply Advisory Committee (legislatively created to advise DOH on its drinking water program.) We will report to the Board regularly and alert the Board if broad public and professional consensus is not achievable.

- The extent to which the proposed rule may make significant changes to a policy or regulatory program;

No significant changes are anticipated.

- The extent to which the rule revision process would benefit from the Board's role as a convener of interested parties.

DOH plans to fully involve all interested parties in both the process and the result.

Attachments:

- Table 1. Chapter 246-290 WAC: Changes Under Consideration to reflect new Municipal Water Law Requirements.
Table 2. Chapter 246-290 WAC Section 2, Planning and Engineering Regulations.
Process and Technical Changes Being Considered

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